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*Kevin L. Smith*

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of the supreme court,  
court of appeals and  
tax court

ATTORNEYS FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 45A04-0708-CR-468

**March 18, 2008**

**MATHIAS, Judge**

Torey Walker (“Walker”) pleaded guilty in Lake Superior Court to three counts of Class B felony dealing in cocaine and was sentenced to eleven years incarceration. Walker appeals and claims that the trial court erred in imposing sentence. We affirm.

### **Facts and Procedural History**

On August 22, 2006, September 20, 2006, and September 27, 2006, Walker sold cocaine to a confidential police informant. As a result, on December 7, 2006, the State charged Walker with three counts of Class B felony dealing in cocaine. On May 29, 2007, Walker pleaded guilty as charged without entering into a plea agreement with the State. The trial court advised Walker of his rights and took the matter under advisement.

On July 5, 2007, the trial court accepted Walker’s plea and proceeded to sentencing. The trial court found as a mitigating circumstance that Walker had admitted his guilt without the benefit of a plea agreement, thereby accepting responsibility for his behavior. The trial court found as an aggravating circumstance that Walker had a prior criminal history, including a juvenile adjudication for possession of cocaine and adult convictions for felony criminal recklessness, felony battery, and felony stalking. The trial court also found as aggravating: the nature and circumstances of the crimes committed, the risk that Walker would commit another crime since he did not have a job or a GED, and that, given Walker’s prior convictions, he was eligible to be charged as an habitual offender. Concluding that the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced Walker to eleven years on each count, to be served concurrently. Walker now appeals.

## Discussion and Decision

Walker claims that the sentence imposed by the trial court is improper because “the trial court failed to identify [Walker]’s prior criminal history and the offenses which made [Walker] habitual eligible.” Brief of Appellant at 4. Therefore, Walker argues, there is no evidentiary support for the trial court’s finding that his prior criminal history was an aggravating circumstance. We disagree.

The pre-sentence investigation report (“PSI”) was admitted at the sentencing hearing without objection. The PSI lists Walker’s prior criminal history in detail and was before the trial court when it identified the aggravating circumstances. That the trial court did not identify specific convictions is of no moment. Moreover, the PSI clearly indicates that Walker had three prior felony convictions which were unrelated to the instant convictions. As such, it appears that the State could have sought to have Walker’s sentence enhanced under the habitual offender statute. See Ind. Code § 35-50-2-8(a) (2004 & Supp. 2007).

To the extent that Walker claims that the trial court improperly weighed the aggravating and mitigating circumstances, this claim is no longer available on appeal. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified upon reh’g, 875 N.E.2d 218. Walker committed his crimes after the 2005 post-Blakely amendments which established the “advisory” sentencing scheme, and Anglemyer therefore controls our review of Walker’s sentence. Pursuant to Anglemyer, we may review the reasons given by the trial court to justify its sentencing decision and the omission of reasons

arguably supported by the record, but the relative weight assigned to those reasons is not subject to appellate review.<sup>1</sup> See 868 N.E.2d at 491.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.

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<sup>1</sup> Although Walker does not directly challenge the appropriateness of his sentence under Appellate Rule 7(B), given the nature of his current offenses and his character, we cannot say that Walker's eleven year sentence is inappropriate. Although Walker pleaded guilty, he has a criminal history which is not insignificant. He also had his probation revoked in the past and had an outstanding warrant at the time he committed the instant offenses. Under these facts and circumstances, a sentence enhanced one year beyond the advisory sentence is not inappropriate.